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No. 96-1608

In The

Supreme Court of the United States

October Term 1996

CLINTON TRIMIEW,

Petitioner,

v.

NORFOLK SOUTHERN RAILWAY COMPANY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SUPREME COURT OF VIRGINIA

Reply to Brief in Opposition

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PETITIONER'S REPLY BRIEF

The railroad seeks to convince this Court that it was free of negligence and the Virginia Supreme Court's ("VSC") reversal of the jury's verdict should stand. Despite these efforts, the plain words and holding of the VSC makes clear that it penalized Trimiew based on the abolished doctrine of assumption of risk, despite a Richmond jury's verdict (upheld by the Trial Court) supporting adequate negligence on the railroad.

The railroad most delicately addresses the VSC's state of denial as to whether ungroomed ballast rock was a known (and thus foreseeable) danger. (See Respondent's Brief at 15). "[D]ifficult to walk on" and "not [posing] an unreasonable danger" are the railroad descriptive phrases chosen. Id.

The VSC explicitly determined Trimiew assumed the risks of "known" workplace dangers in direct violation of 45 U.S.C. § 54. To allow this decision to stand is to ignore plain meaning of controlling federal law, and to shift significant liability from railroad employers back on to the workers. Such an assault on this Court's decision in Tiller I and Tiller II (citations in Trimiew's original Petition), should not be permitted despite the passage of a half century.

This Court should accept Trimiew's Petition, and summarily reverse the VSC and order reinstatement of the Circuit Court of Richmond's Judgment Order.

Respectfully submitted this 16th day of May, 1997.

CLINTON TRIMIEW

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